

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UGOCHUKWU GOODLUCK  
NWAUZOR, FERNANDO AGUIRRE-  
URBINA, individually and on behalf of all  
those similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC., a Florida  
corporation,

Defendant.

No. 3:17-cv-05769-RJB

PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION FOR  
MISTRIAL

The *Nwauzor* Plaintiffs respectfully request that the Court deny The GEO Group's Motion for Mistrial. Plaintiffs expressly join and adopt the arguments and authorities set forth in the State of Washington's opposition to the motion, and add the following with respect to the authority cited by GEO in its motion.

GEO's reliance on both *Jazzabi v. Allstate Ins. Co.*, 278 F.3d 979, 984 (9th Cir. 2002) and *United States v. Southwell*, 432 F.3d 1050, 1055 (9th Cir. 2005), is misplaced. Neither case stands for the proposition that a jury cannot reach a unanimous and binding decision on one question in a special verdict form even if they cannot reach a unanimous decision in another.

1 Instead, the issue in both cases is that the trial courts permitted ultimate findings of liability  
2 even though the jury did not reach a unanimous verdict on an affirmative defense that would  
3 have defeated liability. Here, however, Plaintiffs do not contend that a unanimous “Yes”  
4 decision on Question No. 1 would establish GEO’s liability, permitting the jury to proceed to  
5 damages. Rather, the analytically and factually distinct question of whether the Washington  
6 Minimum Wage Act unfairly discriminates against GEO because it is a federal government  
7 contractor would remain for retrial if the jury cannot reach a unanimous verdict on that  
8 question.

9 In *Jazzabi*, the jury was presented with a single liability question – whether the  
10 plaintiff-insured had set fire to his own home. Because this question related solely to  
11 defendant-Allstate’s affirmative defense, and the parties had stipulated to the facts underlying  
12 plaintiff’s affirmative breach of contract claim, the trial court incorrectly concluded that the  
13 absence of an affirmative verdict on that question meant that Allstate had failed to carry its  
14 burden and that it could be held liable. That error is what prompted the Ninth Circuit’s  
15 statement that “Liability cannot be established until after the jurors unanimously agree that the  
16 elements are satisfied and they unanimously reject the affirmative defenses.” 278 F.3d at 984.  
17 However, that holding is inapposite to the instant case, where no one contends that GEO’s  
18 liability would be established in the absence of a unanimous verdict on the intergovernmental  
19 immunity defense. That does not mean that the jury is or should be precluded from entering a  
20 unanimous verdict on the distinct question of whether the detained workers were employees  
21 under the Minimum Wage Act.

22 Similarly, in *Southwell*, the trial court permitted the jury in a criminal trial to reach a  
23 “guilty” verdict even though it appeared that the jury might be deadlocked on the affirmative  
24

1 “insanity” defense. The Ninth Circuit concluded this was error, because a guilty verdict  
2 required a unanimous conclusion that the defendant was guilty of the elements of the crime  
3 and was sane.

4 The analogous situation here would be if Plaintiffs were arguing that GEO’s liability  
5 would be established by a unanimous “yes” verdict on Question No. 1 and a deadlocked verdict  
6 on Question No. 2, because the latter would constitute a failure of proof on GEO’s affirmative  
7 defense. But Plaintiffs are not arguing that. Plaintiffs are merely stating that the jury can  
8 permissibly reach a unanimous conclusion on one of two distinct questions.

9 Finally, there can be no reasonable dispute that the questions are factually and legally  
10 distinct. The first question asks only if the detainee workers were employed by GEO within  
11 the definitions of the Minimum Wage Act. The answer to this question hinges solely on the  
12 relationship between the detainee workers and GEO. The second question asks, *if* the detainee  
13 workers are employees, whether the Minimum Wage Act unfairly discriminates against GEO  
14 because of its status as a federal contractor. The answer to that question hinges on a different  
15 set of considerations – namely a consideration of the RCW 49.46.010(3)(k) exemption and a  
16 comparison of GEO and its work program to the State and its various inmate work programs.  
17 The jury can readily reach a unanimous verdict on the first question without considering or  
18 reaching consensus on the facts relevant to the second, and it should be permitted to do so.

19 GEO’s motion for a mistrial should be denied.

20 DATED this 17<sup>th</sup> day of June, 2021.

SCHROETER GOLDMARK & BENDER

*s/ Adam J. Berger*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED at Seattle, Washington this 17<sup>th</sup> day of June, 2021.

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